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Good morning. My name is Jacqueline Gillan and I am Vice President of Advocates for Highway and Auto Safety (Advocates), a coalition of consumer, health, safety, medical and insurers working together to advance federal and state programs and policies that prevent deaths and injuries on our neighborhood streets and highways. I commend the Subcommittee for holding hearings on the safety of curbside bus operations.

Motorcoach safety is a serious concern for anyone who relies on and uses this growing and affordable mode of transportation. Unfortunately, when it comes to motorcoach safety, consumers are forced to travel wearing a blindfold. Many of us in this hearing room have put our excited child on a bus for an out-of town school field trip, or waved goodbye to our retired parents as they took off for a vacation, or participated in a church trip with family and friends that relied on hired bus transportation, or even took advantage of low cost fares to travel between Washington, DC and New York or Boston on buses boarded at street corners in downtown locations. Despite the widespread use of motorcoach transportation in our everyday lives, the public is completely in the dark about the safety of motorcoach operators because of chronic and continuing failures by the Federal Motor Carrier Safety Administration (FMCSA) to exercise its legal authority to regulate the safety of this industry. My testimony this morning will discuss the numerous government studies that have identified and substantiated lax federal oversight, the inability of FMCSA to keep unsafe motorcoach operators and unsafe bus drivers off the road, the inexcusable lack of public information to provide consumers with critical safety information, and recommendations for congressional and agency actions.

Little is known about the size of curbside motorcoach operations, including how many companies are evading federal and state safety requirements, and how much oversight FMCSA and the states are applying to stopping this dangerous trend in inexpensive passenger transportation. As I emphasize near the end of my testimony today, Congress should request a report that describes in detail the proportions of these maverick bus companies and how changes to safety laws and regulations, as well as improved federal and state oversight, can not only make these motorcoach operators clean up their act but also raise the entire level of our nation's motorcoach safety to a new, higher level.

Motorcoach Crashes Are Serious and Deadly

On May 9, 1999, a motorcoach traveling on I-610 in the heart of New Orleans, Louisiana, with 43 passengers aboard, ran off the road, struck a guardrail that was powerless to stop it or change its deadly trajectory, broke through a chainlink fence, collided with a raised earth embankment, and finally slid to a halt. Twenty-two passengers were killed, and the bus driver and 15 passengers received serious injuries. Only 6 passengers escaped with minor injuries.

More than 6 years later, on September 23, 2005, a motorcoach carrying nursing home residents fleeing the imminent landfall of Hurricane Rita caught fire and exploded, initially killing 24 of the 44 people on board who were residents and employees of a Dallas-area nursing home. The National Transportation Safety Board (NTSB) is still in the process of investigating that horrific crash.

Because motorcoaches carry up to 55 passengers, when a crash does occur it can be both catastrophic and deadly. Since 1999 alone, NTSB has investigated and reported on 8 major motorcoach crashes. Those eight NTSB-investigated crashes took scores of lives and inflicted injuries on hundreds of people. In many cases, those severe injuries represented a lifetime of disability for the victims.

There are thousands of small commuter airline flights every day in the U.S., yet in most cases each aircraft is carrying fewer passengers than an over-the-road motorcoach that, filled to capacity, is transporting 55 people. The issues and concerns of motorcoach safety are in many ways much more akin to passenger aviation safety than they are to large truck safety. Motorcoaches in interstate commerce are

motor carriers regulated by the FMCSA along with trucks in interstate freight operations that exceed 10,000 pounds gross vehicle weight.

According to figures from FMCSA, there are just under 8 million large trucks on our highways and streets today, but less than 800,000 buses of all kinds.[1] This 10-to-1 proportion already balances the scales heavily in favor of concentrating on large truck safety.

Despite the millions of passengers and billions of air miles flown each year, passenger aviation often concludes a year without a single crash fatality. Unfortunately, public authorities have chronically overlooked motorcoach safety. It is not being held to the same high standards as aviation safety both for operators and for vehicle safety oversight. This failure to ensure strict oversight and safety compliance is systemic in nature and exists at both the federal and state levels. Both FMCSA and state commercial motor vehicle (CMV) authorities are not adequately inspecting motorcoaches and auditing motorcoach companies to ensure that dangerous companies are prevented from continuing to operate. Safety information on motorcoach companies is being compiled by FMCSA that is inaccurate and late, and the methods that FMCSA uses to rate motorcoach safety, the Safety Status Measurement System (SafeStat), and to assign safety ratings, compliance reviews, have been shown repeatedly to be unreliable and unequal to the important task of identifying the motor carriers at high risk of crashes. In addition, even the basic, once-a-year bus safety inspection required by federal regulation is apparently not being carried out by half the states.

FMCSA Lacks Reliable Information on State Annual Bus Safety Inspections

Title 49 Code of Federal Regulations (CFR) Part 396 requires that the Secretary prescribe standards for annual, or more frequent, inspection of CMVs, unless the Secretary makes a finding that another inspection program is as effective as an annual, or more frequent, inspection. Eight years ago last month, the Federal Highway Administration (FHWA) issued a final notice that closed the docket on state bus inspection programs.[2] The notice added a final state, Ohio, that the agency had deemed to have a periodic inspection program that met the requirements of a program in the CFR, at least with respect to church buses. In that notice, FHWA listed 25 of 50 states with approved, equivalent periodic inspection programs.

Although Advocates' staff performed a search of FMCSA's current web site for state bus inspection programs, we could not find any entries referring to the current status of state compliance with the requirements of 49 CFR Part 396, including any updated listing of states that may have instituted periodic bus inspection programs in the intervening 8 years since the last notice that accompanied the closing of the relevant docket for adding new states. We also do not know how comprehensive each bus inspection program may be in each of the 25 listed states. It may be the case that some of the other states listed currently do not inspect all buses or do not inspect over-the-road motorcoaches.

It is clear that timely information on state bus inspection programs – whether they are still current and how well and often they inspect motorcoaches, as well as any other types of buses, for safety compliance – apparently is not obtainable from FMCSA's web site. It should be stressed here that the minimum period inspection requirement is only once a year, pursuant to the legislated requirement that Congress enacted in Section 210 of the Motor Carrier Safety Act of 1984.[3] Since it is well known that inspection of CMVs, including motorcoaches, needs to be much more intensive and frequent than for passenger motor vehicles, a once-a-year inspection regime is clearly no guarantee of safe motorcoaches. Many companies even in states that have bus inspection programs can come into compliance for an annual inspection only to allow major safety features of motorcoaches to fall into disrepair or become inoperative soon after passing the annual inspection. Advocates could find no information from FMCSA's web site on the effectiveness of state motorcoach inspection programs to detect safety problems or how well or for how long state motorcoach inspection programs ensure compliance with all federal motor carrier safety requirements.

FMCSA Suffers from Major Data Deficiencies for Identifying Motor Carriers That Are High Safety Risks

Chronic problems of data adequacy, including accuracy, completeness, and timeliness, have compromised both the FHWA's Office of Motor Carriers and FMCSA's effectiveness for many years in conducting their compliance and enforcement programs. These defects continue today, as pointed out below, and have been documented by federal government oversight investigations that stretch back into the middle and late 1990s.

For example, the U.S. Department of Transportation (DOT) Office of the Inspector General (OIG) issued a report in early 1997 showing that database problems used to prioritize all motor carriers for compliance reviews were endemic at FHWA OMC, the agency of jurisdiction that preceded FMCSA.[4] The data deficiencies found included inadequate numbers of carriers covered in the agency's database, failure to include state and local records of crashes and violations of local traffic laws, and inaccurate and delayed data submissions by the states. These severe data problems covered trucks, buses, and motorcoaches alike.

A follow-up OIG study was conducted 2 years later, in 1999, and found the same defects as the 1997 study, as well as a failure of FHWA to ensure that local enforcement agencies accurately and completely report crashes, traffic violations, and roadside inspection results.[5] Those data problems were found by the OIG to undermine any effectiveness of the Safety Status Measurement System (SafeStat) to identify and target motor carriers with high-risk safety records by, for example, targeting compliance reviews for the worst companies. SafeStat problems will be discussed below in a separate section of my testimony.

These criticisms of the serious defects in FHWA's data system were extended by the OIG in early 2000 to the newly created FMCSA's use of the Commercial Driver Licensing Information System (CDLIS).[6] The OIG found that both FMCSA and the states were failing to collect information on driver disqualifying violations and also failing to disqualify drivers even though a state's CDLIS data bank showed that drivers who should be disqualified were still operating their vehicles.

These findings of data inadequacies were mirrored in findings and testimony from the U.S. General Accounting Office (now the Government Accountability Office) (GAO) that began before the creation of FMCSA and have continued until the present.[7] Sadly, the careful evaluation of severe data problems at FMCSA and specific recommendations for improvement have gone unheeded at the agency. In November 2005 the GAO issued yet another report on the failures of FMCSA to correct these deficiencies.[8] In general, GAO found that CMV crash data still do not meet general data quality standards of completeness, timeliness, accuracy, and consistency. One-third of CMV crashes that the states are required to report to FMCSA were not reported and those crashes that were reported were not always accurate, timely, or consistent. GAO also found that FMCSA had no formal guidelines for awarding grants to the states for their data improvement efforts. Moreover, even the agency's ratings of how well or badly states were performing in their data collection and transmission efforts were flawed because of the methodology used by FMCSA to develop the state rating system.

Systemic Defects in SafeStat Undermine the Agency's Ability to Identify Motor Carriers with the Highest Safety Risks

SafeStat is a complex algorithm used by FMCSA to identify which motor carriers present the highest risk of having crashes and of committing motor carrier safety regulatory violations. Recent evaluations of SafeStat by the U.S. DOT OIG and by the Oak Ridge National Laboratory have both come to the same conclusions: SafeStat is not objective, many motor carriers are improperly identified as high safety risks, many motor carriers fail to be identified as high safety risks, and the data used to calculate SafeStat are unreliable for the reasons listed in the previous section of this agency review.[9]

The 2004 OIG report found that the usefulness of SafeStat was undermined by substantial weaknesses in the data reported to FMCSA by the states and motor carriers. Specifically, there was a lack of updated census data for 42 percent of the active registered motor carriers that had failed to meet the congressionally mandated requirement to update their registration every 2 years, and only 31 percent of these carriers had SafeStat scores for one or more safety evaluation areas. The OIG Report also found that about one-third of large CMVs involved in crashes each year had no reports in the database, 6 states did not report any crashes during a 6-month period that was reviewed, and that 20 percent of the crashes in fiscal year 2002 were reported 6 or more months late. There also were high levels of underreporting of moving traffic violations that had been identified during roadside inspections, as well as failures to identify carriers associated with violations or misidentification of carriers with violations. Finally, the OIG Report found that 71,000, or 11 percent, of the active interstate motor carriers were on record as having no power units and 98,000, or 15 percent, of registered carriers were on record as having no drivers.

The OIG Report also determined that these severe data deficiencies were not being corrected by FMCSA through the use of existing sanctions and incentives to promote better data reporting by states and motor carriers. FMCSA had not imposed sanctions on any states, including withholding basic Motor Carrier Safety Assistance Program (MCSAP) grant funds from states for failing to correct data quality problems. Even MCSAP incentive grant formulas are not adequate because the agency only uses timeliness of data submitted to make incentive calculations while data accuracy and completeness – which are crucial – are ignored.

As a result of these severe data defects, the OIG report recommended that the use of these defective data continue for internal agency purposes, but that they were not reliable enough for public use. As a result, FMCSA suspended posting these crash and safety data about motor carriers on its web site shortly after receiving the OIG report until these data met higher standards for completeness, accuracy, and timeliness. Those data are still not available on FMCSA's web site location called Analysis and Information Online. As discussed in the foregoing section, the latest GAO report issued November 2005[10] shows that little progress has been made by FMCSA in nearly 2 years to correct these system defects in its data system for determining the safety of motor carrier management and operations.

One of the OIG's recommendations in this report was for FMCSA to hire a contractor to conduct a new study for revalidating SafeStat. Oak Ridge National Laboratory performed this review, and its study was sent to the agency dated October 2004.[11] Unfortunately, this evaluation uncovered fundamental defects in SafeStat that the prior OIG evaluation had not detected:

- **SafeStat Is not Objective:** The basis of SafeStat ultimately is subjective, based upon expert consensus opinion or judgment, and therefore has no meaningful statistical relationship to the data used to operate the system's algorithm for detecting high safety risk motor carriers.
- **Most Motor Carriers Are improperly Identified as High Safety Risks:** The identification of 9 of every 10 motor carriers as high safety risks is mistaken and only an artifact of the data and the use of those data in the SafeStat algorithm.
- **The Data Used in SafeStat Are often Unreliable:** As was also found both by the OIG and GAO, the data used in SafeStat are defective. About half the states either report CMV crash data late, underreport the number of CMV crashes, or overreport the number of CMV crashes. Also, the data sufficiency criteria are unrealistic, do not support a sound statistical use of the data gathered by FMCSA, and often result in many motor carriers not receiving a safety ranking.

With regard to this last point, although the Oak Ridge Report does not specifically address the implications of the data sufficiency issue in detail, the criteria for being ranked strongly favor larger carriers with more power units, drivers, and higher annual vehicle-miles-traveled. Many small carriers

with few power units and drivers cannot achieve the exposure necessary to be safety ranked, yet many small motor carriers are apparently at high risk of safety violations. This is particularly true of motorcoach companies, which often have few buses in each fleet. Because they are not identified by SafeStat, these small motor carriers "fly under the radar" of detection by FMCSA for oversight and enforcement.

We do not know exactly what steps FMCSA is taking to correct these baseline defects of both SafeStat and the data upon which SafeStat relies to make its calculations for tagging motor carriers as high safety risks and subjecting them to CRs and more roadside inspections. Although Congress directed that motor carrier data systems be ensured for accuracy, reliability, and timeliness both in the Transportation Equity Act for the Twenty-First Century[12] and in the ensuing legislation creating FMCSA, the Motor Carrier Safety Improvement Act of 1999,[13] these mandates have still not been fulfilled.

FMCSA Performs Few Compliance Reviews and Fails To Assign Timely Safety Ratings

A central problem compromising agency effectiveness in overseeing motor carrier safety and reducing FMCSR violations is the annually low numbers and percentage of both roadside inspections and compliance reviews (CRs).

FMCSA has a mandate inherited from FHWA OMC to safety rate all motor carriers.[14] However, as pointed out in the OIG report of March 26, 1997, FHWA in 1992 basically decided that it would no longer attempt to fulfill the statutory requirement to safety rate all registered interstate motor carriers.[15] As Advocates will show below in a sample of a few states, very few motorcoaches have been assigned timely, reliable safety ratings.

The implementing regulations for conducting CRs specifies criteria for assigning one of three safety rating categories to a motor carrier: Satisfactory, Conditional, Unsatisfactory.[16] The well-known 1999 OIG report cited earlier in Advocates' testimony found that FHWA's OMC was not sufficiently effective in ensuring that motor carriers comply with safety regulations and that the enforcement program did not deter noncompliance.[17] One of the primary reasons found by the OIG for this ineffective enforcement outcome was the paucity of CRs performed along with the low number and percentage of motor carriers receiving either Conditional or Unsatisfactory ratings.

At the time the OIG report was released it was estimated that there were about 480,000 registered motor carriers of all kinds,[18] so the figure of 6,473 CRs performed in 1998, the most recent year for which the OIG had data, represents only 1.3 percent of all registered motor carriers. This figure, in turn, includes only a tiny number of safety rated motorcoaches. Moreover, the OIG report found that of the carriers receiving CRs with safety ratings, only 1,870 – or only about 0.4 percent – had received less-than-Satisfactory ratings. Of this number, only 971 received a rating of Unsatisfactory. This means that only about 0.2 percent of all registered motor carriers were given Unsatisfactory safety ratings.

On its face, it is improbable that assigning Unsatisfactory safety ratings to only 0.2 percent of registered interstate carriers has a deterrent effect on what in 1998 was about 480,000 registered motor carriers, including several hundred motorcoach companies. Indeed, the OIG found that a deterrent effect was not even evident for the carriers that received either Conditional or Unsatisfactory safety ratings. For example, the OIG report pointed out that of the 1,870 carriers that received either Conditional or Unsatisfactory ratings, 650 had over 2,500 crashes from October 1, 1994, through September 30, 1998, resulting in 132 fatalities and 2,288 injuries.

Other organizations have called for improvements to the safety rating process. For example, NTSB's current list of the Most Wanted Transportation Safety Improvements – Federal Issues[19] argues that the entire safety fitness regime operates too leniently with criteria that do not result frequently enough in motor carriers being shut down or drivers having their licenses revoked. NTSB points out that a

pending Unsatisfactory rating occurs if 2 of 6 factors are found unacceptable, after which a general freight carrier has 60 days to correct the deficiencies or receive an Out-of-Service Order (OOS) that prohibits further operations. For hazardous materials (hazmat) and passenger motor carriers, the company has 45 days to correct the deficiencies or receive an OOS Order.

However, NTSB regards this system as simply permitting unsafe carriers and drivers to continue to operate. NTSB instead recommends that if a carrier receives an Unsatisfactory rating for either the vehicle or the driver factor, the bad rating alone should trigger a pending Unsatisfactory rating. According to NTSB, this recommendation has been reissued annually since 1999 and FMCSA does not plan full implementation of any changes to its safety rating and other safety oversight processes until 2010.[20]

In its 1999 major report on motor carrier safety oversight and enforcement, the OIG found that the number of CRs performed by FHWA's OMC had declined by 30 percent since fiscal year 1995 even though there had been a 36 percent increase in the number of motor carriers over this period.

FMCSA's web site contains a National Summary for the most recent available year, 2004, for which data are available.[21] If one were to calculate the percentage of CRs performed in 2004 out of the total number of carriers listed for 2004 as registered with FMCSA, this barely exceeds one percent (1.13 percent) of registered carriers receiving CRs. This figure represents no significant difference from the poor showing of FHWA OMC shown earlier in our review that was documented in the 1999 OIG report. In fact, the 2004 CR percentages on the FMCSA web site for Conditional and Unsatisfactory safety ratings for the 7,623 carriers receiving CRs yield 2,310 carriers assigned a Conditional rating and 701 carriers assigned an Unsatisfactory rating.

Recall that the 1999 OIG report indicated that 971 carriers out of approximately 480,000 registered companies received an Unsatisfactory rating. This means that current efforts to take dangerous carriers out of operation have resulted in even fewer assigned ratings of Unsatisfactory out of a much larger population of registered motor carriers (677,249), nearly one-third larger than in 1998.

If the figures on CRs posted on FMCSA's web site are to be relied upon, it is clear that not only has there been no improvement in conducting CRs and assigning Conditional and Unsatisfactory ratings since the figures provided in the 1999 OIG report, the agency on a percentage basis appears to be even further in arrears in using this powerful safety oversight and compliance tool. However, this condition appears to be irremediable given the decision of FHWA OMC documented in the earlier 1997 OIG report no longer to attempt to perform CRs and assign safety ratings to all registered motor carriers.[22] This was borne out by the July 2001 testimony of the IG who stated that more than three-quarters of registered motor carriers in the U.S. had not been subjected to a CR and were operating without any safety ratings.[23]

State Examples Illustrate Chronic Deficiencies

The following examples illustrate the chronic deficiencies in FMCSA's administration of CRs by showing the results of Advocates' investigation into a few states to provide a snapshot of the current status of interstate motorcoaches. Advocates evaluated 4 states whose motorcoach CRs are currently listed on FMCSA's web site, Analysis and Information Online. Advocates reviewed Maryland in the mid-Atlantic area, Texas in the southern middle of the U.S., Wisconsin in the upper midwest, and Oregon in the far northwest. The motorcoach CRs for each state are arranged with the final safety rating – including entries that the carriers are unrated – following the 4 Safety Evaluation Areas of Accident, Driver, Vehicle, and Safety Management. Unfortunately, there is no way for us to determine which of these motorcoach companies in these 4 states might be "curbside" bus operations.

Maryland: Advocates found 100 Safety Rated motorcoaches in Maryland.[24] Of these, 55 were unrated, 5 bore Conditional ratings, and 39 had Satisfactory ratings. None is rated Unsatisfactory.

However, of the 39 Satisfactory ratings, 27 were more than 5 years old and had been awarded in 2000 or earlier. Many of the Satisfactory ratings had been given in the 1990s, and one Satisfactory rating had been assigned in 1988. If we regard Satisfactory safety ratings more than 5 years old as essentially no longer an accurate or relevant indicator of contemporary operating safety, and add the unrated and Conditional rated carriers to these outdated Satisfactory ratings, then 87 of 100 listed passenger carriers do not have timely safety ratings.

But the story gets even worse. In many instances, even motorcoaches with Satisfactory safety ratings are not rated in all 4 Safety Evaluation Areas. In fact, of the 39 passenger carriers out of 100 listed that carry Satisfactory safety ratings, only 5 have been reviewed for all 4 Safety Evaluation Areas. The most frequent missing evaluation area is the overarching finding of company Safety Management adequacy. Only the 4 motorcoaches assigned Satisfactory ratings in 2005 have been evaluated for Safety Management.

If a reasonable standard is assumed for the Maryland safety ratings of motorcoaches for both timeliness and completeness, as described above, then of the 100 companies listed on the FMCSA web site, only 4 carriers have Satisfactory ratings, were rated recently (within the last 5 years), and were reviewed for all 4 Safety Evaluation Areas. Although FMCSA provides this web site with state-by-state CR rating information as a consumer guide to selecting a good motorcoach for transporting a wide variety of people such as children, church and tour groups, and the disabled, there are almost no motor carriers in Maryland to choose from that have recent Satisfactory ratings that are also the result of findings for all 4 Safety Evaluation Areas.

Texas: Texas fares a little better than Maryland, but not by much.[25] The Texas list from FMCSA contains 193 active motorcoaches. Of these, 75 are rated Satisfactory, 9 carry Conditional ratings, and 109 are unrated. None is rated Unsatisfactory.

Of the 75 Texas motorcoaches rated Satisfactory, 20 were assigned the highest rating more than 5 years ago. One carrier had its Satisfactory rating assigned in 1986. A high percentage of the Satisfactory ratings were assigned in 2005 and even in 2006.

However, on closer inspection this somewhat rosier picture is not so impressive. Two of the three 2006 Satisfactory ratings alone, for example, are missing 3 of 4 Safety Evaluation Areas and one is missing 2 of 4 Areas. Of all 75 Satisfactory rated motorcoaches in Texas, 64 are not rated in all 4 Safety Evaluation Areas. In many cases, two or even three of the 4 Areas have no findings. This even includes Satisfactory ratings that were just assigned in 2005 or 2006.

Performing the same exercise for Texas as we did just now for Maryland, of the 193 motorcoaches listed by FMCSA for the state, only 9 are rated Satisfactory, had that rating assigned in the last 5 years, and were rated in all 4 Safety Evaluation Areas. Again, not much to choose from for a consumer trying to find the safest motorcoaches in Texas, a big state where perhaps none of those 9 carriers with the best, most complete, and most recent rating is close to the location where your group needs passenger transportation service.

Wisconsin: Adding two other states will provide a reasonable sample from across the nation. Wisconsin has 55 registered motorcoach companies currently listed on the Analysis and Information web site. Of these, 34 are rated Satisfactory, 2 are Conditional, and 19 are unrated. No carrier is rated Unsatisfactory. However, 28 of those 34 Satisfactory ratings are more than 5 years old. Three of the Satisfactory rated carriers were awarded this highest rating in 1987. Only one motorcoach company of the 34 rated Satisfactory has had all 4 Safety Evaluation Areas covered for the rating. Most motorcoaches rated Satisfactory have one or more of the 4 Evaluation Areas unchecked. Most carriers rated Satisfactory are

not rated for overall safety management. One Satisfactory rating assigned in 2000 has none of the 4 Safety Evaluation Areas covered, so one wonders what the highest rating of Satisfactory could have been based on.

Oregon: For Oregon, only 17 motorcoach companies are listed as having received CRs. Of these, 11 are rated Satisfactory, with none rated in all 4 Safety Evaluation Areas. One motorcoach company is rated Conditional and 5 have no ratings. Seven of the 11 carriers rated Satisfactory were assigned this rating more than 5 years ago. One Satisfactory rated carrier was given its rating in 1986.

One more fact needs to be emphasized here at this end of this brief review of just a few states: a Satisfactory rating is not FMCSA's Good Housekeeping seal of approval. A Satisfactory rating from the agency does not mean superior or excellent safety operations and safety management. In fact, FHWA back in the 1990s at one point proposed defining the Satisfactory safety rating as "Not Unsatisfactory," a characterization that does not exactly inspire confidence in a consumer seeking transportation services.[26] For all practical purposes, a Satisfactory rating simply means that a carrier receiving a safety audit could have just gotten across the threshold. In school terms, a carrier receiving a Satisfactory rating could have gotten a D- in the safety areas that were evaluated. Moreover, the Satisfactory rating grade was inflated by FHWA in the 1990s, essentially doubling the bad safety score that could still result in a Satisfactory rating.[27] However, absent serious safety problems with crashes, driver and vehicle safety oversight by the company, and overall safety management deficiencies, the Satisfactory rating can and will be awarded even to companies with mediocre safety records.

In the end, if you are a consumer looking for the safest passenger motor carrier in your state, you probably are left to your own devices to try to determine where to put your money and have the best chance of safe management, safe vehicles, and safe drivers to ensure that you and the others sharing the motorcoach safely reach your destination. You certainly will get little help from FMCSA's safety rating efforts.

Motorcoach Driver Qualifications Have Inadequate Federal and State Requirements

Current requirements for motorcoach drivers at both the state and federal levels are woefully inadequate. The driver for the horrendous 1999 Mother Day's motorcoach crash in New Orleans had slipped through several safety nets by the time he lost control of the vehicle and left the roadway into a dangerous roadside environment.[28] Although he had a current commercial driver license (CDL) with the additional bus endorsement and a medical certificate, he was suffering from several life-threatening medical conditions, including severe heart problems and partial kidney failure. He also had verified use of marijuana and of a sedating antihistamine. The medical certification process both at the state and federal levels should have pulled this driver from the road long before the crash. No commercial pilot with these severely impairing medical conditions could have continued to operate an aircraft with 55 people aboard.

Motorcoach drivers are required to have CDLs with the additional bus endorsement. However, there are no training requirements in federal law and regulation for entry-level CMV drivers, and there are none for the additional endorsements for operating multi-trailer large trucks, hazardous materials vehicles, school buses, or motorcoaches. Moreover, motorcoach drivers only have to pass an additional, short knowledge test to gain the additional bus endorsement.

Although FHWA and FMCSA together have spent over 20 years studying CMV operator training issues, producing their own Model Curriculum for training both drivers and the trainers of those drivers, and conducting rulemaking pursuant to Section 4007(a) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA),[29] FMCSA did an abrupt about-face in May 2004 and issued a final rule that avoided adopting any basic knowledge and skills training requirements for entry-level commercial drivers.[30] Instead, the agency published a regulation that only required drivers to gain familiarity with 4

ancillary areas of CMV operation – driver qualifications, hours of service requirements, driver health issues, and whistleblower protection. FMCSA did not require any specific curriculum to be used for these areas of familiarity and no minimum amount of instruction was specified. Moreover, even though FMCSA determined that drivers in their first 5 years of CMV operation could benefit from basic entry-level training, the agency further reduced the meaning of 'entry-level driver' to the point where it was defined to include only drivers with less than one year of driving experience with a CDL. Note that the agency did not require driver training as a prerequisite for a candidate seeking an entry-level CDL.

This rulemaking outcome was a complete reversal from earlier agency statements that the majority of new commercial drivers were not receiving adequate training. The agency had repeatedly asserted that the CDL itself was only a licensing standard, not a training standard, and therefore could not be expected to do the job of training commercial drivers in both the knowledge and technical skills to comply with numerous federal and state motor carrier regulations as well as to safely pilot their big commercial vehicles on public highways.[31] Moreover, FHWA stated that the actions of the private sector alone on a voluntary basis were unlikely to improve the inadequate level of driver training that its contractor had found in an in-depth report completed in July 1995.[32] FMCSA restated this finding in its 2003 proposed rule, that entry-level drivers are in general not receiving adequate basic training in the knowledge and skills necessary to operate a large commercial vehicle.[33]

Nevertheless, FMCSA in its final rule contradicted its stance on the need for basic entry-level knowledge and skills training that it had consistently assumed throughout the protracted history of consideration and rulemaking on this crucial safety issue, including its support for entry-level training in its own 2003 proposed rule. Instead, the agency issued a final rule that excused almost all novice drivers from even being considered entry-level commercial drivers and required them to receive only perfunctory instruction in corollary areas of CMV operation.

Because FMCSA in its final regulation reversed its own findings that basic knowledge and skills entry-level driver training was inadequate and should be required, Advocates filed suit against FMCSA. Last year, in a unanimous decision, the U.S. Court of Appeals for the District of Columbia found that the final rule was arbitrary, capricious, and an abuse of agency discretion, and remanded the rule to FMCSA.[34] In its opinion, the appellate court stated that the rule "focuses on areas unrelated to the practical demands of operating a commercial motor vehicle" and that the rule was "so at odds with the record assembled by DOT that the action cannot stand."[35]

Although an excellent bus driver training curriculum was forged by FHWA 20 years ago, there are no training requirements for the operator who is responsible for the lives of 55 people on board an over-the-road motorcoach, no certification is needed to apply for an entry-level CDL, and no instruction is needed to seek and gain the additional, special endorsement to operate motorcoaches in interstate commerce.

As already shown above, when FMCSA's laissez-faire stance on the training, certification, and licensing of motorcoach drivers is matched with the extraordinarily weak and incomplete CRs of motorcoaches, as well as to the unreliable data used by the agency to assign safety scores to these carriers, there is only one, inevitable conclusion – both FMCSA and the states are failing to properly oversee and evaluate motor coach safety at every level of analysis – company, driver, and vehicle:

►The safety data from the states relied upon by the agency are inadequate and no longer available for public use.

►The SafeStat system cannot reliably discover which carriers are at high risk of safety failures in management and operations.

►The safety audit system of CRs is a patchwork quilt of mostly unrated carriers or carriers with incomplete or outdated safety ratings.

►The training of motorcoach drivers is left to the vagaries of private sector efforts with no federal benchmarks for measuring what constitutes a safe operator.

It is unimaginable that this kind of government dereliction of public safety assurance and oversight would be tolerated for commercial airline travel.

Conclusion and Recommendations

It is clear that passenger transportation safety by over-the-road motorcoach, including curbside operations, is not held to the high standards of commercial passenger aviation. Severe motorcoach crashes can take many lives in a single event and inflict severe injuries on numerous passengers. Congress needs to take action to raise the level of motorcoach company safety and improve the quality of federal and state oversight.

- **Require a Detailed Oversight Report on Curbside Motorcoach Operating Safety:** Congress should ask the U.S. DOT OIG or another federal oversight organization, such as GAO, to conduct an in-depth evaluation of curbside motorcoach operations that identifies how many there are, how they successfully evade federal and state safety compliance and inspection, and what needs to be done to ensure a high level of public safety.

- **Require Stringent State Bus Inspection Programs:** Bus inspection programs in the past have been incomplete or non-existent in many states. Congress should require all states to have intensive bus safety inspection programs. However, it is doubtful that a once-a-year inspection requirement, even if adhered to, is sufficient to ensure that all registered interstate motorcoaches are adhering to vehicle safety requirements. CMVs, especially those carrying 55 people on board, need much more frequent inspection intervals than passenger motor vehicles.

- **Accelerate Basic Reform of Safety Data Reporting, SafeStat, and Compliance Reviews:** State safety data must be dramatically improved; SafeStat, including its algorithm, must be reformed from the ground up to reliably detect high-risk motor carriers; and the CR system must be reformed and expanded to keep safety ratings up to date.

- **Upgrade the Testing Requirements for both Entry-Level CDLs and Special Endorsements:** Congress needs to direct FMCSA to ensure that both the CDL entry-level examination and the additional, special endorsements are substantially improved as an adequate test of both knowledge and skills to operate a CMV. It is especially important that there be improved testing of the special knowledge and skills needed to operate an interstate motorcoach.

- **Require Entry-Level Commercial Motor Vehicle and Advanced Motorcoach Driver Training:** Motorcoach professional drivers should be required to undergo both entry-level and special motorcoach operator training. A certification that a basic, federally-approved CMV driving curriculum was administered and that the candidate successfully passed or graduated should be required to take the CDL entry-level test. Similarly, advanced training education through a certified motorcoach driving curriculum should be required as a condition for being tested for the additional, special bus endorsement.

Endnotes

[1] http://www,fmcsa.dot.gov/facts-research/facts-figures/analysis-statistics/cmvfacts.htm. There are no separate figures for motorcoaches provided, but the United Motorcoach Association estimates that there are probably about 45,000 to 50,000 commercial over-the-road motorcoaches in the U.S. There is, in addition, an unknown number of "private" motorcoaches such as those used for schools, church groups, and other organizations, some of which are interstate and must conform to most Federal Motor Carrier Safety Regulations.
[2] 63 FR 8516 *et seq.*, February 19, 1998.
[3] Title 49 U.S.C. § 31142.
[4] *Motor Carrier Safety Program – Federal Highway Administration*, Report Number AS-FH-7-006, March 26, 1997.

[5] *Motor Carrier Safety Program – Federal Highway Administration*, Report Number TR-1999-091, April 26, 1999. That report had been preceded by testimony delivered by the OIG before the Subcommittee on Transportation, Committee on Appropriations, United States House of Representatives, February 23, 1999, in which he emphasized that FHWA could not identify which motor carriers were the highest safety risks because of the agency's poor data system, and stressed that action needed to be taken because the number of truck-crash fatalities was increasing each year. *Surface Transportation Safety: Motor Carrier Safety and Related Matters*, Report Number TR-1999-055.

[6] *Motor Carrier Safety*, Statement of the Honorable Kenneth M. Mead before the Subcommittee on Transportation, Committee on Appropriations, United States House of Representatives, Report Number TR-2000-059, March 2, 2000; this was followed by a full audit report on the inadequacies of the disqualification programs of FMCSA and the states: *Disqualifying Commercial Drivers: Federal Motor Carrier Safety Administration*, Report Number MH-2000-106, June 30, 2000.

[7] *See*, Statement of Phyllis F. Scheinberg, Associate Director, Transportation Issues, Resources, Community, and Economic Development Division, *Truck Safety: Effectiveness of Motor Carriers Office Hampered by Data Problems and Slow Progress on Implementing Safety Initiatives*, GAO/RCED-99-122, March 17, 1999; Statement of Phyllis F. Scheinberg, Associate Director, Transportation Issues, Resources, Community, and Economic Development Division, *Commercial Motor Vehicles: Significant Actions Remain to Improve Truck* Safety, before the Subcommittee on Transportation and Related Agencies, Committee on Appropriations, United States House of Representatives, GAO.T-RCED-00-102, March 2, 2000.

[8] *Highway Safety: Further Opportunities Exist to Improve Data on Crashes Involving Commercial Motor Vehicles*, GAO-06-102, November 18, 2005, transmitted to the Subcommittee on Transportation, Treasury, the Judiciary, House and Urban Development, and Related Agencies, Committee on Appropriations, United States Senate; and to the Subcommittee on Transportation, Treasury, and Housing and Urban Development, the Judiciary, and District of Columbia, Committee on Appropriations, United States House of Representatives. This report unfortunately duplicates many of the same criticisms of agency data system failures that GAO pointed out back in 1999. *See*, *Truck Safety: Motor Carriers Office Hampered by Limited Information on Causes of Crashes and Other Data Problems*, GAO/RCED-99-182, June 29, 1999.

[9] *See*, *Improvements Needed in the Motor Carrier Safety Status Measurement System: Federal Motor Carrier Safety Administration*, U.S. DOT OIG, Report Number MH-2004-034, February 13, 2004; K. Campbell, R. Schmoyer, H. Hwang, *Review of the Motor Carrier Safety Status Measurement System*, Final Report, Prepared for the Federal Motor Carrier Safety Administration, Oak Ridge National Laboratory, October 2004.

[10] "Highway Safety: Further Opportunities Exist to Improve Data on Crashes Involving Commercial Motor Vehicles," *op. cit.*

[11] K. Campbell, R. Schmoyer, H. Hwang, "Review of the Motor Carrier Safety Status Measurement System," *op. cit.* The Oak Ridge SafeStat review was preceded by two evaluations conducted by the Volpe National Transportation Systems Center which also found systemic deficiencies in SafeStat that prevented the algorithm from identifying high safety risk motor carriers. *See*, *Improvements Needed in the Motor Carrier Safety Status Measurement* System, February 2004; *SafeStat Effectiveness Study Update,* Volpe National Transportation Systems Center, March 2004.

[12] Pub.L. 109-59, 119 STAT. 1144 (Aug. 10, 2005).

[13] Pub.L. 106-159, 113 STAT. 1748 (Dec. 9, 1999).

[14] Section 215 of the Motor Carrier Safety Act of 1984 requires the Secretary to maintain, by regulation, a procedure for determining the safety fitness of an owner or operator of commercial motor vehicles. 49 U.S.C. § 31144.

[15] *Motor Carrier Safety Program*, Report Number AS-FH-7-006, March 26, 1997. The goal of assigning safety ratings to all motor carriers by September 30, 1992, was a self-imposed target by FHWA that could not be attained, as pointed out in the GAO report of January 1991, *Truck Safety: Improvements Needed in FHWA's Motor Carrier Safety Program*, Report No. GAO/RCED-91-30. At the time of GAO's preparation of this report, FHWA had not rated about 60 percent of interstate motor carriers. As GAO points out in this report, the agency decided that its safety oversight resources would be better spent than attempting to safety rate all motor carriers in accordance with legislative requirements. On October 1, 1994, FHWA discontinued safety reviews to assess unrated motor carriers.

[16] The most recent statement of the governing regulations for determining safety fitness is the FMCSA final rule of August 22, 2000 (65 FR 50919 *et seq.*), which was a response to the increased stringency of safety fitness requirements enacted in Section 4009 of TEA-21 that amended 49 U.S.C. § 31144, originally enacted by Section 215 of the Motor Carrier Safety Act of 1984 (P.L. 98-554, 98 Stat. 2832). This final rule amended the regulations for safety fitness determinations in 49 CFR Pts. 385 and 386. Pt. 386 contains the controlling criteria for making safety fitness determinations and Pt. 387 contains the rule of practice for the agency controlling the issuance of CR ratings, petitions, hearings, orders, and other administrative machinery for conducting the oversight and enforcement programs of FMCSA. It should also be noted that FMCSA recognizes that its administrative selection of the three rating categories of safety fitness, Satisfactory, Conditional, and Unsatisfactory, have been legislatively enshrined through explicit mention and use of the three ratings in Section 15(b) of the Motor Carrier Safety Act of 1990. 49 U.S.C. § 31144.

[17] "Motor Carrier Safety Program: Federal Highway Administration," *op. cit.*

[18] Census data from the Motor Carrier Management Information System (MCMIS) found at http://www.fmcsa.dot.gov. Also *see*, the December 15, 2005, GAO report, "Large Truck Safety: Federal Enforcement Efforts Have Been Stronger since 2000, but Oversight of State Grants Needs Improvement," *op. cit.*

[19] http://www.ntsb.gov/Recs/mostwanted/truck_safety.htm.

[20] *Id.*

[21] http://ai.fmcsa.dot.gov/ProgramMeasures. However, another location on the agency's web site lists 2004 CRs at a total of 10,104.

[22] *See*, "Motor Carrier Safety Program: Federal Highway Administration," *op. cit.*

[23] *Motor Carrier Safety at the U.S.-Mexico Border*, Statement of the Honorable Kenneth M. Mead, Inspector General of the U.S. Department of Transportation, before the Committee on Commerce, Science, and Transportation, United States Senate, July 18, 2001.

[24] http://www.fmcsa.dot.gov/Passenger.

[25] *Id.*

[26] *See*, 61 FR 18866 *et seq.*, April 29, 1996.

[27] This grade inflation for the Satisfactory rating was adopted in 1993-1994. In revisions to the Safety Fitness Rating Methodology done without public notice and comment, FHWA raised the passing score for a Satisfactory rating from the former range of zero percent to 16 percent for the Out of Service (OOS) rate, to a range of zero percent to 33 percent. Similarly, while the Conditional rating was formerly assigned to a motor carrier only if the vehicle OOS rate fell between 17 percent and 33 percent, a Conditional rating in the revised rating scheme was assigned only if the OOS rate was 34 percent or higher. These and other maneuvers essentially eliminated any Unsatisfactory rating for bad OOS ratings alone. Theoretically, it meant that a carrier could have a 100 percent OOS rating but still be assigned a Conditional rating. *See*, the agency's documentation of these changes at 59 FR 47204, September 7, 1993.

[28] *See*, NTSB Highway Accident Report HAR-01/01, *Motorcoach Run-Off-The-Road Accident, New Orleans, Louisiana, May 9,* 1999, adopted August 28, 2001.
[29] Pub.L. 102-240, 105 STAT. 1914 (Dec. 18, 1991).
[30] 69 FR 29384 *et seq.*, May 21, 2004.
[31] *See*, 61 FR 18355 *et seq.*, September 30, 1996.
[32] *Assessing the Adequacy of Commercial Motor Vehicle Driver Training: Final Report*, 3 vols, Applied Science Associates, Inc., for the Federal Highway Administration, Office of Motor Carriers, July 1995.
[33] *See*, 68 FR 48863, 48865, August 15, 2003.
[34] 429 F.3d 1136 (D.C. Cir. 2005).
[35] *Id.* at 3-4.